care to our senior citizens, they help clean up our parks, they teach the Nation's children and adults to read, and they provide other valuable volunteer services to our communities. If we fail to provide the necessary funds for AmeriCorps, we will unnecessarily be punishing the volunteers, the communities that they serve and the children, elderly and the poor who benefit from the skills and energy of the volunteers.

Some 2 weeks ago, the Senate responded positively and in a timely manner to address these emergency requests. Now, the House is about to pass a stripped-down supplemental appropriations bill in the amount of $983 million just for FEMA disaster relief, thus ignoring the Senate's supplemental legislation enacted 2 weeks ago for wildfire fighting, NASA emergency funds, and AmercCorps funding.

I am distressed by the situation in which we find ourselves. It is not the fault of the Chairman of the Appropriations Committee, Mr. STEVENS. He has been trying to find a solution to this problem. The Senate has done its part to solve this problem. Citizens who find themselves victimized by natural disasters and wildfires, and those individuals and communities who would have benefited from the AmeriCorps program, do not appreciate the game-playing now taking place in the Congress.

Mr. President, I yield the floor. I again thank the distinguished Senator from Alabama.

HISTORY OF JUDICIAL NOMINATIONS

Mr. SESSIONS. Mr. President, I think it is important, in light of Senator HATCH's remarks and some of the criticisms we have heard of his leadership in the Judiciary Committee a few days ago, that we recall a little history here on how we have handled judicial nominations in the past and why we are having problems today.

The criticism of Judiciary Committee Chairman ORRIN HATCH is simply unfair. He has stood foursquare for fairness, for constitutionality in the process, and for good public policy as we go about confirmations. That has been his record. When he chaired or was ranking member of the Judiciary Committee during the 8 years of President Clinton's administration, 377 Clinton nominees were confirmed to the bench. Only one nominee was voted down. No nominee was voted down in his committee. No nominee was filibustered in his committee.

When President Clinton left office, there were 41 judicial nominees who had not yet been confirmed by this Senate. That is a very good record compared to the situation when former President Bush left office. The Democrats controlled the Senate at that time, and 61 of former President Bush's judicial nominees were left unconfirmed. Those numbers are indisputable.

I know the distinguished Presiding Officer, Senator WARNER from Virginia, remembers the complaints in the Republican Conference that Senator HATCH had been too generous to President Clinton's nominees. Several Republican colleagues fussed at Senator HATCH, and Members were saying, ''you are moving too many,'' or, ''we need to block them,'' or, ''let's consider a filibuster,'' or, ''let's change the blue slip rules on circuit nominees,'' which would give individual Senators more power than they historically had to block Clinton nominees.

There was a conference set aside for the very purpose of resolving these issues. It was quite a battle. We discussed it for some time. Senator HATCH spoke passionately about the process, about what he thought the policy should be, about what he thought the law was, and about what he thought the Constitution required. We finally voted, and we voted not to filibuster and not to enhance the blue slip rule, thereby continuing the historic policies of this Senate. It was a very seriously contested matter. Senator HATCH argued passionately for his view, and at the time no one was sure how the vote would come out. But his arguments won the day.

It is worth considering some other history about the confirmation process.

In the entire history of the American Republic, it is indisputable that we have never had a filibuster of a circuit or a district judge. This tactic was used for the first time 2 years ago by the Democrats. They held a retreat not long after the 2000 election. The New York Times reported that a group of liberal professors met with the Democratic Senators, and they called on the Democrats to change the ground rules about confirmations, to ratchet up the partisanship. They had been complaining for 8 years that President Clinton's nominees weren't getting treated fairly. Overwhelmingly, I suggest, they were in error in those complaints. But in any case, instead of saying ''we are going to act better now that we are in charge''—they were in charge of the Senate for a little less than 2 years—the Democrats decided to change the ground rules and make it even more difficult for President Bush's nominees to be confirmed.

So let me tell you what they did. President Bush announced his first group of judicial nominations in May 2001. He nominated 11 superbly qualified lawyers. As a gesture of good faith, he included 2 Democrats among these 11 nominees. One, an African-American, had previously been nominated by President Clinton. These were men and women of extraordinary accomplishment, with high ratings by the American Bar Association, and with tremendous backgrounds.

For almost 2 years, only the two Democrats were moved promptly. Virtually all of the remaining nine of the eleven original nominees remained unconfirmed by 2002. They were not even voted out of committee. They were blocked in committee.

The Democrats appeared to change the burden of proof—now, the judicial nominee seemed to bear the burden of proving that he or she was worthy of the judicial service. The chairman of the Courts Subcommittee then said that this would change the basic ground rules for confirmation.

The Democrats also insisted on changes in the blue slip policy. The blue slip policy allows home State Senators certain powers to object to the confirmation of Presidential nominees. The Democrats wanted to enhance that blue slip policy in order to block President Bush's nominees. They complained about it when President Clinton was in office and said it was wrong to use it as Republicans were properly doing. But when President Bush sent up nominees, they wanted to enhance the power of an individual Senator to block the President's nominees.

And then, of course, the Democrats started filibustering. They have already filibustered Priscilla Owen and Miguel Estrada. Both of those extraordinarily qualified nominees languish on the floor today. Both were given a unanimous well-qualified rating by the American Bar Association—a man and a woman of extraordinary achievement, great legal experience, superb legal ability, and unquestioned integrity. Yet the Democrats chose to filibuster each—the first filibusters in the history of this country for a circuit judge nominee.

Now, we have begun to see slowdowns in committee. The Democrats effectively have begun to try to filibuster in committee. They misinterpreted Rule IV of the Judiciary Committee rules, saying the chairman could not call a matter up for a vote unless at least one member of the Democratic minority agreed.

That rule was put in to make sure that a chairman had to bring a matter up for a vote, whether the chairman wanted to do so or not, when there were ten overall votes in favor, including at least 1 member of the other party. This rule is a limit on the power of the chairman. It did not stand for the novel proposition that, if the Democrats stuck together, no Republican nominee could be brought up for a vote.

To say that rule IV should be interpreted the way the Democrats on the committee are now complaining would mean the chairman couldn't bring any matter up for a vote without minority support—that a minority in committee could block any nomination moving out of committee. This interpretation is a recipe for disaster: a chairman has to be able to get a matter up for a vote, or the committee cannot do business.

Senator HATCH interpreted the rule as he is empowered to do. The majority of the committee, not to mention two parliamentarians, supported him on that. We should not and are not going to have filibusters in the Judiciary Committee that keep judges from even having a vote in the Judiciary Committee.

I just want to say to my fellow colleagues that it is not correct that Chairman HATCH is acting unfairly. Chairman HATCH has acted with principle in this matter. He brought Clinton nominees to the floor, and he moved them forward, even when some of us objected. Even when Senator HATCH himself may have objected on the merits, those nominees got votes.

Take, for example, the Richard Paez nomination, which I opposed. Several people had holds on that nomination. Some wanted to see if we could work with President Clinton to get some more mainstream nominees for the Ninth Circuit Court of Appeals. We were hoping to negotiate with him on that, as we tried to do with other things. Finally, the Republican Majority Leader, TRENT LOTT, said: It is time for this man to have an up-and-down vote. File for cloture. He filed for cloture, and I supported cloture. ORRIN HATCH supported cloture. TRENT LOTT supported cloture. When Paez was voted on, I am pretty confident that TRENT LOTT voted against him, just as I voted against him. Several dozen votes were cast against him.

I note parenthetically that now-Judge Paez was part of a panel of the Ninth Circuit that overturned the ''three strikes'' law in California. That panel was overruled by the U.S. Supreme Court earlier this year. Judge Paez was also part of the panel that declared the Pledge of Allegiance unconstitutional because it had the words ''under God'' in it.

Notwithstanding indications of such judicial activism during his confirmation hearing and process, Judge Paez was confirmed. He got his up-or-down vote. The Republican leadership moved the nomination forward.

That is all we are asking of the Democratic leader, TOM DASCHLE, with respect to Miguel Estrada and Priscilla Owen. Instead, it looks like we may be heading toward more filibusters. I certainly hope not.

Of the many reasons why we shouldn't have a filibuster, an important one is the Article I of the Constitution. It says the Senate shall advise and consent on treaties by a two-thirds vote, and simply ''shall advise and consent'' on nominations.

Historically, we have understood that provision to mean—and I think there is no doubt the Founders understood that to mean—that a treaty confirmation requires a two-thirds vote, but confirmation of a judicial nomination requires only a simple majority vote. That is why we have never had a filibuster. People on both sides of the aisle have understood it to be wrong. They have understood it to be in violation of the Constitution.

As Senator HATCH has said, the complaint suggesting there was a filibuster on the Fortas nomination is not really correct. They had debate for several days. Apparently, when the votes were counted, it was clear that considering those who were absent, there were enough votes to defeat the nomination, and the nomination was withdrawn.

So there has never really been a filibuster of a judicial nominee in the Senate until now, when our Democratic colleagues have decided to change the ground rules on confirmation. They have said so and done so openly, and seem to be little concerned that the Constitution may be violated in the process.

Mr. President, these nominees are entitled to an up-and-down vote. If a Member does not like them, he or she can vote against them. But it is time to move these nominees. How can they defend voting against nominees of the quality of Priscilla Owen or Miguel Estrada? How can they justify opposing a man of such integrity, ability, patriotism, and courage as Attorney General Bill Pryor, a man of faith and integrity? These are questions that should be answered on the floor. Let us discuss these nominees' records here. And then, let us just vote. That is what the Constitution and Senate tradition demand of us.

I think the American people are getting engaged, and they are telling us ''we are tired of obstructionism,'' ''we are tired of delays,'' and ''we believe these nominees deserve an up-and-down vote.'' I could not agree more.

I yield the floor.

RECESS UNTIL MONDAY, JULY 28, 2003, AT 11 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 11 a.m. on Monday.

Thereupon, the Senate, at 3:35 p.m., recessed until Monday, July 28, 2003, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 25, 2003:

THE JUDICIARY

JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE STEPHEN F. WILLIAMS, RETIRED.

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE LAURENCE H. SILBERMAN, RETIRED.

NUCLEAR REGULATORY COMMISSION

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2004, VICE RICHARD A. MESERVE, RESIGNED.

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM EXPIRING JUNE 30, 2009. (REAPPOINTMENT)